



SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70470; File No. SR-NASDAQ-2013-117)

September 23, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Minor Modifications to Pricing Incentive Programs under NASDAQ's Schedule of Fees and Credits Applicable to Trading on the NASDAQ Options Market

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 9, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ is proposing to make minor modifications to pricing incentive programs under NASDAQ's schedule of fees and credits applicable to trading on the NASDAQ Options Market ("NOM"). Specifically, NASDAQ is proposing to exclude from volume-based pricing calculations any trading day on which NOM is closed for trading due to early closing or a market-wide trading halt. This exclusion exists today for the trading of [sic] on NASDAQ's equities trading facility.³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ NASDAQ is not proposing to exclude trading on the day of the Russell Reconstitution from the calculation of volume-based pricing for the trading of options. The Russell Reconstitution has little or no impact on options trading because the options market does

The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com>, at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ Options Rule Chapter XV, Section 2 contains a number of pricing incentive programs that are designed to encourage member participation in NOM by increasing rebates or reducing fees for firms that trade on NOM in increasingly higher volumes.

NASDAQ has determined for purposes of calculating Monthly Volume Tiers under Chapter XV, Section 2, any day that the market is not open for the entire trading day should be excluded from such calculation. This formulation would exclude, for example, days on which the market closes early for holiday observances. It would also exclude days where NOM declares a trading halt in all securities or honors a market-wide halt initiated by another market. This would apply to the market-wide trading halt of approximately three hours on August 22, 2013, which NOM plans to exclude from Monthly Volume Tiers for the month of August.

not operate a closing cross such as occurs on the equities market. Thus, there is little or no impact on the volume of options trades.

The proposed rule change will impacted [sic] billing rates for all eight Monthly Volume Tiers by which NOM determines the rebate per share for firms that add Customer and/or Professional liquidity based on increasing percentages of total industry customer equity and ETF option average daily volume ("ADV") contracts per day in a month (Tiers 1 through 4). It would also apply to the calculation of Average Daily Volume for a specific member (Tiers 5 through 8). The rebates range from \$0.25 to \$0.48 per contract:

| | | |
|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| Tier 1 | Participant adds Customer and/or Professional liquidity of up to 0.20% of total industry customer equity and ETF option average daily volume ("ADV") contracts per day in a month | \$0.25 |
| Tier 2 | Participant adds Customer and/or Professional liquidity of 0.21% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month | \$0.40 |
| Tier 3 | Participant adds Customer and/or Professional liquidity of 0.31% to 0.49% of total industry customer equity and ETF option ADV contracts per day in a month | \$0.43 |
| Tier 4 | Participant adds Customer and/or Professional liquidity of 0.5% or more of total industry customer equity and ETF option ADV contracts per day in a month | \$0.45 |
| Tier 5 | Participant adds (1) Customer and/or Professional liquidity of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014, and (3) the Participant executed at least one order on NASDAQ's equity market | \$0.42 |
| Tier 6 | Participant has Total Volume of 115,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer and/or Professional liquidity | \$0.45 |
| Tier 7 | Participant has Total Volume of 150,000 or more contracts per day in a month, of which 50,000 or more contracts per day in a month must be Customer and/or Professional liquidity | \$0.47 |
| Tier 8 | Participant (1) has Total Volume of 325,000 or more contracts per day in a month, or (2) Participant has Total Volume of 200,000 or more contracts per day in a month, of which 70,000 or more contracts per day in a month must be Customer and/or Professional liquidity or (3) adds Customer and/or Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month. | \$0.48 |

If the Exchange did not exclude aberrant low volume days when calculating ADV for the month, as a result of the decreased trading volume, the numerator for the calculation (e.g., trading volume) would be correspondingly lower, but the denominator for the threshold calculations

(e.g., the number of trading days) would not be decreased. This would result in an effective cost increase.

The proposed rule change would also apply to the monthly volume tiers NOM uses to determine the Rebate to Add Liquidity:

| Monthly Volume | Rebate to Add Liquidity |
|-----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| Tier 1 Participant adds NOM Market Maker liquidity in Penny Pilot Options of up to 39,999 contracts per day in a month | \$0.25 |
| Tier 2 Participant adds NOM Market Maker liquidity in Penny Pilot Options of 40,000 to 69,999 contracts per day in a month | \$0.30 |
| Tier 3 Participant adds NOM Market Maker liquidity in Penny Pilot Options of 70,000 to 99,999 contracts per day in a month | \$0.32 |
| Tier 4 Participant adds NOM Market Maker liquidity in Penny Pilot Options of 100,000 or more contracts per day in a month | \$0.32 or \$0.38 in the following symbols BAC, GLD, IWM, QQQ and VXX or \$0.40 in SPY |

The proposal does not apply to other transaction fees or rebates in Section 2, or to other fees on the pricing schedule outside of Section 2.

Absent the authority to exclude days that the market is not open for the entire trading day, members will experience an effective increase in fees or decrease in rebates. The artificially low volumes of trading on such days reduce the average daily activity of NOM members both daily

and monthly. Accordingly, excluding such days from the monthly calculation will diminish the likelihood of an effective increase in the cost of trading on NOM, a result that is unintended and undesirable to NOM and to NOM members.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

NASDAQ believes that the proposed change to eliminate from the calculation days on which the market is not open the entire trading day is reasonable because it preserves NASDAQ's full intent behind adopting volume-based pricing. The proposed change is equitable and non-discriminatory because it applies equally to all members and to all volume tiers. In the event that NASDAQ identifies a disparate impact on one or another volume tier in the future, NASDAQ may determine to modify that volume tier via an additional proposed rule change.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4) and (5).

be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed rule change should not impact competition because it merely preserves the full intent of NASDAQ's already-filed prices. Moreover, the proposed rule change regarding days on which the market is not open the entire trading day will result in an effective reduction of fees or increase in rebates such that the total cost of trading on NOM should decline. This is evidence that a proposed rule change is pro-competitive rather than anti-competitive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁷

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

A proposed rule change filed under Rule 19b-4(f)(6)⁸ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. NASDAQ wishes to exclude August 22, 2013, from the calculation of volume-based pricing for August of 2013. Waiver will allow the Exchange to immediately implement the proposed rule change, thereby reducing the potential for confusion among member organizations and the public about how the Exchange will calculate volume-based pricing for August of 2013. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁰

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹¹ of the Act to determine

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6)(iii).

¹⁰ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78s(b)(2)(B).

whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2013-117 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2013-117. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also

will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2013-117, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Kevin M. O'Neill
Deputy Secretary

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¹² 17 CFR 200.30-3(a)(12).